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SHYLOCK IN THE OLD TESTAMENT.

THE STORY OF LABAN VIEWED IN THE LIGHT OF THE CODE HAMMURABI.

A VERY interesting question concerning the relations of the famous Hammurabi Code to the Hebrew record has hitherto been passed over by critical students. The intrinsic interest of the narrative, when read in the light of the law of the time in that region, as well as its value as material for critical purposes, suggest that it should be given careful consideration. For the present paper, a bare presentation of parallels must answer: critical conclusions being left to the reader.

The Hebrew traditions declare that their ancestors were Arameans. "An Aramean ready to perish was my father," was the confession of the devout Hebrew. "Laban the Aramean" is of Abraham's own kindred. The point of departure, geographically speaking, is Ur-Casdim. The various theories about the location of Ur need not be discussed here. The preponderance of opinion is toward a location in southern Babylonia. We are therefore justified in examining the early Aramean stage of the Hebrew people for traces of Babylonian influences. Conversely, should comparison of the Code of Hammurabi with the patriarchal narratives disclose in the latter evidences of Babylonian culture, we would be strengthened in the view that the site of Ur-Casdim must be sought in Babylonia.

The theory that a primitive common clan law sufficiently accounts for all resemblances between the Babylonian and the patriarchal law can also be tested. If they are but sister developments

from a common nomad code, we should not anticipate wide differences in patriarchal practice in the same generation. But if kinsmen dwelling in different lands are shown to speak and act as though the laws of their respective homes were widely different, we may be sure that we have to deal with considerably developed local laws, instead of mere primitive clan customs.

Hammurabi's own records also warrant our making the proposed examination. "Martu," as Palestine was called, is mentioned repeatedly in his inscriptions. The precise extent of Babylonian authority there we do not know. But Harran and Aleppo are mentioned by Hammurabi as objects of his special care and attention. We find that Babylonian supremacy seems complete throughout the Euphrates valley: and we may expect all important transactions in that region to be influenced by the Hammurabi Code, while a stranger from Southern Palestine would probably not be familiar with the law of the land. Only one of the patriarchal narratives, that of Jacob and Laban, has its scene laid in the land of Harran. The sharp practice narrated should then be examined in the light of Harran law.

In the Code of Hammurabi, much attention is given to the property rights of women. We are concerned with but one of the elements of a woman's property in the present case, the *tirhatu*, or betrothal present. The groom is expected to bring such at the time of the formal arrangement of the marriage contracts. The father of the bride must not appropriate this gift, and must endow his daughter's marriage, else he puts her in the position of having been sold as a slave, instead of honorably married.

The bride's possession of the *tirhatu* is clearly indicated by the general principle of the code, which compels a wrong-doer to forfeit to the injured party a sum at least equal to the amount originally involved in any given business transaction. In the cases where a wife is wronged by her husband, the equivalent of the original *tirhatu* is paid over to the wife herself, not to her father. If the latter holds the *tirhatu*, it seems that he does so merely in trust; to divert it to his own uses would be equivalent to embezzlement. If the wife be divorced without just cause, the *tirhatu* is doubled

by the husband and paid over to the wife as penalty for infringement of the marriage contract.

One naturally asks, with regard to the *tirhatu*, what were the poor man's chances for marrying into a wealthy family, or what he would do if unable to purchase a maid-servant. The code makes it apparent that some equivalent might be offered by a penniless suitor. In section 139 we are told, in case of unjust divorce, that if no *tirhatu* had been presented by the husband in the beginning, one mina of silver must be paid to the divorced wife. That is to say, one mina of silver is named as the equivalent of the least *tirhatu* which should have been brought by the penniless suitor.

Now from the wage-scale in the code we learn that the standard daily wage for a first-class herdsman or agriculturist is 5 šE of silver per day; skilled artisans being rated slightly lower. As 180 šE make one shekel, and 60 shekels a mina, and, as Prof. Morris Jastrow has shown (A. J. T., 1898), that the Babylonians observed a seventh day in some fashion, we readily recognize that one shekel means six weeks wages and one mina 360 weeks; or exactly seven years, at the ordinary Semitic standard of 360 days to the year. Seven years service, for a day-laborer who is a competent workman, stands then as the possible alternative for a *tirhatu* in cash or goods, if his aspirations are to alliance with one in more fortunate circumstances. But what has been pointed out with regard to the bride's ownership of the *tirhatu* would indicate that the net proceeds of such service the bride would consider as constituting her *tirhatu*; and appropriation of it by her father she would be prepared to resent.

In the story of Jacob and Laban, the former, after a month's residence, proffered seven years service for the hand of Rachel. Perhaps Laban felt that the minimum amount proffered was derogatory to the dignity of his family. Whatever the motives of his conduct, it appears that Jacob did not know the laws of the land, and Laban was prepared to take advantage of the fact. He had the law constructively in favor of his specious excuse. While not specifically enjoined, it is clearly expected (C. H. 66) that the marriages of the older children shall be arranged first.

Laban has the further advantage in the fact that no bonds appear to have been drawn up, specifying which daughter Jacob desired as his bride. C. H. 128 declares that if a man has betrothed or married a wife, but has not drawn up the required bonds, that woman is no wife. In the absence of such documents Jacob could not have a legal claim to Rachel.

Jacob's reliance upon a mere verbal agreement between kinsmen in a land whose laws made witnesses or bonds essential to the validity of all important business transactions (C. H., *passim*) had brought him a bitter experience. By the end of the second seven years, however, it is apparent that he knew something of the technicalities of the law himself, and was prepared to better the instruction by putting Laban in the position of breaking the law repeatedly. Two important sections of the code may be quoted here (C. H. 264, 265) :

"If a herdsman, to whom oxen and sheep have been given to pasture, receives his hire according to agreement, is satisfied (in that particular), and allows the cattle or sheep to become enfeebled, or lessens the birth-rate, according to his contracts he shall make good the birth-rate and the increase."

"If a herdsman, to whom oxen or sheep have been given to pasture, has been dishonest, or has altered the terms (of his contract) or has sold them, they shall call him to account, and he shall restore to the owner oxen or sheep tenfold what he had stolen."

These provisions are not intended for the ordinary day laborer, but for the master-herdsman or contractor. Laban's experience with Jacob had convinced him that he had a valuable master-herdsman whom it might be well to keep at his own terms. The sections quoted indicate the customary character of such agreements. It is expected that contracts shall stipulate a certain reasonable proportion or percentage of increase. With such a contract, Jacob would have no opportunity for his revenge. Hence the peculiar proposition he makes to Laban.

Now if Jacob proposes to alter the terms of his contract, he is liable for heavy damages; but he so manipulates matters that Laban changes the terms himself, ten times over; and Jacob has Laban's

daughters as witnesses to the fact (Gen. xxxi. 6, 7). Again, if Jacob, under an ordinary contract, diminishes or enfeebles the cattle, Laban can collect damages from him; but the character of the agreement leaves Laban no such recourse, and he repeatedly alters the terms to recover his previous losses.

Meanwhile Laban's daughters have a deep sense of wrong. No dowry had been given them: the results of Jacob's service had been appropriated by Laban; and they were in consequence in the status of maid-servants, who had been sold to a foreigner, contrary to the provisions of the code (C. H., 280). Or they might consider themselves as legally in the status of unportioned concubines whose marriage their father refused to endow, and who must expect their brothers, after their father's death, to give them their rights (C. H., 184). But the black looks of their brothers, who are asserting that Jacob has robbed Laban, warn them that they need not look for redress in that quarter. At the family council the wives of Jacob apparently approve his methods, declaring that their father has treated them as strangers or foreigners, that he has devoured or wholly alienated all that they rightfully considered their own, and that he has simply sold his daughters as if they were slaves. Jacob, in their view, is only helping himself in a case where the law could not help him, when he plans to get possession of the vast increase in Laban's cattle, which his service had produced, as their *tirhatu*.

But there is another contingency, which they apparently consider: Laban's original fraud, with the absence of legal documents, makes it possible for Laban to take radical action in the case. He might choose, in the last resort, to take away his daughters by force, upon the ground that they were not legally married, and so send Jacob away stripped of everything. As the strained relations make it clear that the end is nigh, Rachel, the ancient Jessica, cunning and daring as well as beautiful, plans the final *coup*.

This may be understood from C. H. 6. We learn that whoever steals the property or household furnishings of a god, shall be put to death, and whoever receives the stolen goods shall be put to death. Such property of the god would include not merely symbols and statuettes, but all kinds of votive or dedicated objects.

Babylonian Judaism in a later period shows how wide a range of interpretation could be given the law. It could be made to accord to property as well as to person the privilege of sanctuary. Unprincipled Jews gave it great abuse. Christ alludes to it in his reference to "Corban," "dedicated," being made an excuse by unnatural children for not using their property to help a needy parent. Perhaps this originated the other device of a "gift to Cæsar" to forestall confiscation by some greedy official. Such protection of valuables may have been the end sought by Micah's wealthy mother, in the story in Judges. Learning the fact, and of the terrible curses launched against the thief, the frightened Micah hastened to surrender his plunder.

The reader may imagine the frame of mind of Laban when he learned that Jacob and Rachel had outwitted him, and had a week the start in the race for the frontier. One may apply, if he will, the outcry of Shylock as described by Salanio. But in the present case—perhaps because Jacob has the stronger troop, and because efforts to recover any property without violence would lead to recriminations that would not be helpful to his cause,—Laban discovers that he has religious scruples upon certain points, and will speak neither good nor bad. His insincerity is shown by his boasting of power to do hurt to the fugitives, and by his immediate preferment of a capital charge.

Jacob replies, stating that he had feared forcible action upon the part of Laban, and later tells him openly that Laban would, if he dared, strip him of everything. Of the final offense charged by Laban he knows nothing, but admits its capital character: "With-whomsoever thou findest thy gods, let him not live." Legal action concerning all earlier proceedings Jacob does not fear, as the absence of documents in the original fraud destroys Laban's opportunities for appeal to the law. Laban cannot deny the bringing of a *tirhatu* in the form of seven years' service. If he choose to assert that the marriage is not legally complete, and that he prefers to bestow his daughter upon some one else, the law would compel him to refund the *tirhatu* or proceeds of Jacob's service, and to add to

it an equal sum (C. H., 160, 161). Such course would be out of the question for such as Laban.

To grasp at once the sudden change of the *rôles* of prosecutor and prosecuted in the dramatic *dénouement*, it must be remembered that the *lex talionis* is the fundamental principle of the code, and every formally preferred charge, if unproven, recoils with the corresponding penalty upon the head of the accuser. C. H. 1 declares that if a man charge a capital crime upon any one and fail to prove it he shall be put to death.

At the end of the search, Jacob suddenly turns upon his accuser, and in his lofty rage he assumes the *rôle* of the magnanimous, as he demands instant trial, before witnesses. Laban has charged a capital crime, and boasted of his power to hurt before the whole company. His charge is not proven and his life is legally forfeit. The herdsman's contracts between them have been altered repeatedly, despite the most faithful service upon Jacob's part; each alteration is liable to a fine of tenfold the amount involved. Laban's sons have been charging fraud (Gen. xxxi. 1); they should prove their allegations, or the family may be fined a sum equal to that which they assert lost. The aggregate fines for the charges made would bankrupt the family. Jacob goes further. The law does not hold the shepherd responsible if wild beasts slay his employer's cattle (C. H., 266). Yet Jacob declares that he voluntarily assumed such losses at first, and that Laban later required it, contrary to the law. He then reverts to the original fraud and closes by asserting that Laban would, if he dared, rob him of everything. Thus the avaricious Aramean, very punctilious about small technicalities of the law when he would get the advantage of his foreign kinsman who did not know the law of the land, has, without his suspecting it, been put in the position of breaking the law repeatedly. He is legally bankrupt, his life is forfeit; his jewelry and sacred equipment have been stolen by his fleeing daughter; and, despoiled of all opportunity for legal redress, he is compelled to sue for peace, and to ask for an agreement that there shall be no effort at prosecution.

In this request for a treaty we may observe another point of contact with the code. Under its provisions a man could not marry

two wives unless the first were a chronic invalid. But for Leah's weak eyes, (perhaps serious abscesses, a common malady of the eye in the Orient and especially considered in the code, 215-220) the first fraud of Laban could have permanently closed the way to Rachel. Neither as wife, maid or concubine could she have come to Jacob, under the law. Perhaps Laban had never intended that she should. But the advisability of retaining a skilful master herdsman would be enough to impel a man like Laban to avail himself of the very convenient section 148 of the code, using Leah's bad eyes as a pretext. But at the witness cairn of Gilead the frontier is near. Beyond the border the code does not apply, and other social standards prevail. That his daughters may not be mistreated, and that Jacob shall take no other wives, Laban has recourse to adjuration.

We may have here one version—perhaps the original—of that much varied, far traveled popular tale, which the genius of Shakespeare has immortalized for the English-speaking world in the "Merchant of Venice." The main elements—the contest of wits over legal technicalities between an avaricious old man and a young man of another land, who finally bests the elder man and runs away with the daughter and the family jewelry, with the dramatic *bouleversement* at the trial scene—are all in the patriarchal tale. It should prove a very interesting problem for the student of comparative folklore.

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